



**DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING
ENFORCEMENT DIVISION
*DIRECTIVE***

**DIRECTIVE
NUMBER
311**

**DISTRIBUTION
DATE
October 1, 1998**

1. **SUBJECT: REFERRAL OF CASE FILES TO LEGAL**
2. **PURPOSE:** To set forth the procedures for controlling the transfer of case files and information between the District Offices and the Legal Division.
3. **BACKGROUND:** Case files are routinely referred from District Offices to the Legal Division for a variety of reasons. It is necessary to have a system for such referrals that protects the expiration of statutory time limits and minimizes the disruption to case processing.
4. **PROCEDURES:**

A. Criteria:

All cases referred to the Legal Division will be accompanied by a transmittal form (DFEH-600-26). It is the responsibility of the individual signing the authorization on the transmittal to ensure that the following criteria for referral are met:

- 1) Cases Recommended for Accusation
 - a) All cases referred to the Legal Division recommending an accusation must be authorized by the District Administrator.
 - b) The cases should be prepared according to the directions in Directive 312, "Progress Memos".
- 2) Requests for Legal Advice
 - a) All cases referred to the Legal Division for advice must have the approval of the District Administrator.
 - b) The advice requested should involve a legal question. It **is not** appropriate to ask for advice on the merits of the case or weight of the evidence.
 - c) Advice should **not** be sought without first researching the subject in the Case Analysis Manual, FEHC Precedential Decisions, etc.

3) Requests to Enforce Pre-Accusation Discovery

- a) All cases referred to the Legal Division for enforcement of discovery must be approved by the District Administrator.
- b) The discovery effort must have been appropriate.
- c) Reasonable efforts must have been made to obtain voluntary compliance. Efforts to obtain voluntary compliance should be described in the remarks section of the transmittal.

4) Requests for Issuance of Temporary Restraining Orders

- a) All cases referred to the Legal Division requesting a Temporary Restraining Order must be approved by the District Administrator.
- b) The Department has the ability to seek injunctive relief in cases to preserve the status quo until a final determination is made in a case. (Refer to Directive 235, "Emergency Relief for Complainants in Employment Cases," for guidance.)

B. Process:

1) Transmittal

- a) The District Administrator will approve all cases referred to the Legal Division prior to computer entry and the generation of the transmittal.
- b) The transmittal will be generated by the computer upon entry of the proper Legal Indicator as indicated below:

Advice/Opinion
Discovery
Enforcement of Subpoenas/Interrogatories

Progress Memo Submitted
Referral for Enforcement of Settlement
Temporary Restraining Order

- c) Whenever a transmittal is requested in the CMIS, and that information is uploaded, the information is recorded in the CMIS and in the Legal CMIS. When after a transmittal is printed and the case is not referred to the Legal Division, ***the CMIS must be corrected immediately.***

2) Referral

- a) The assigned Consultant will ensure that the printed information in the top half of the transmittal has been completed correctly, that the "Remarks" section is completed, and that adequate lead time remains on the case.
- b) The top half of the transmittal will be initialed by the District Administrator.
- c) The case file, Progress Memo, and one copy of the transmittal will be routed as follows:
 - All transmittals to the Legal Division will be addressed to the Chief Counsel.
 - Case files should be sent overnight by courier. If U.S. Mail must be used, case files should be sent Certified Mail, Return Receipt requested.
 - The date of the referral will be recorded on the Case Diary.
 - A copy of the Progress Memo and Legal Transmittal will be forwarded to the appropriate Regional Administrator.
- d) A third copy of the transmittal will be retained by the District Administrator in a special file entitled "Legal Referral." As cases are returned from the Legal Division, this copy of the transmittal will be removed from the file and discarded.
- e) When the investigation is to continue in the District Office, all necessary information from the case file should be copied and retained in a duplicate file for reference.

5. **APPROVAL:**

Nancy C. Gutierrez, Director

Date